

Appln No. 10/045,995
Amdt date August 4, 2005
Reply to Office action of November 2, 2004

REMARKS/ARGUMENTS

Applicant thanks the Examiner for his careful consideration of this application. In response to the above-identified Office action, Applicant amends the application and seeks reconsideration, reexamination and allowance thereof. In this response, Applicant does not add or cancel any claims. Applicant amends claims 30 and 37. Accordingly, claims 1-15, 28, 30-40 and 43 are pending in the application.

I. Finality of Office Action

Applicant notices a discrepancy between the Office Action Summary and page 3 of the Office action. The Summary indicates that the Office action is non-final. However, page 3 of the Office action indicates that the Office action is final. Applicant notes that the Office action is the first after a Request for Continued Examination where amendments to the claims were submitted therewith. Thus, Applicant believes that the indication of finality on page 3 is a typographical error.

II. Double Patenting

Claims 1-15, 28, 30-40 and 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5, 7-13, 37-38, 48 and 56-60 of U.S. Patent No. 6,814,710. Applicant submits herewith a terminal disclaimer in compliance with 37 C.F.R. 1.321(c). Accordingly, reconsideration and withdrawal of the provisional double patenting rejection of these claims are requested.

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III. Claims rejected under 35 U.S.C. § 103(a)

Claims 30-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,618,262 issued to Rene (hereinafter "Rene") in view of U.S. Patent No. 6,190,338 issued to Arndt (hereinafter "Arndt"). The Applicant respectfully requests that these rejections be withdrawn.

To establish a *prima facie* case of obviousness, the Examiner must show that the cited references, combined, teach or suggest each of the elements of the claim. In regard to independent claim 30, this claim, as amended, includes the elements of "a driving mechanism to translate the carriage assembly axially along said guide rails, the driving mechanism mounted on the carriage assembly." Neither Rene nor Arndt teach each of the elements of this claim. Rather, Rene teaches a motor 100 connected to the carriage through a linkage arm 96 and rotating member 98 that provides reciprocating longitudinal movement for the carriage. See Rene column 3, lines 65 through column 4, line 5. This motor 100, linkage arm 96 and rotating member 98 are not part of or mounted on the carriage 36. Rather, they are mounted on the support member 42 of the frame. Further, the motor 78 of Rene rotates the camshaft 64 to move the massaging members 62. See Rene, col. 3, lines 52-56. The motor 78 does not drive the movement of the carriage. Therefore, Rene in view of Arndt does not teach each of the elements of claim 30. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 30 are requested.

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Claims 31-37 are dependent from independent claim 30 and incorporate limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 30, these claims are not obvious over Rene in view of Arndt. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

v. Allowable Subject Matter

Applicant notes with appreciation that the Examiner has indicated that claims 1-15, 28, 38-40 and 43 are allowable over the prior art.

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Conclusion

In view of the foregoing, it is believed that all claims now pending, namely claims 1-15, 28, 30-40 and 43 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (626) 795-9900.

Respectfully submitted,
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